

*United States v. Payton Gendron*

**22-CR-109-LJV**

**DEFENDANT'S  
EXHIBIT A**

DECLARATION OF MATTHEW RUBENSTEIN REGARDING  
PRE-TRIAL PREPARATION TIME IN THE SECOND CIRCUIT

1. I serve as the Director of the Capital Resource Counsel (CRC) project. The Capital Resource Counsel and the Federal Death Penalty Resource Counsel (FDPRC) projects comprise the Federal Capital Trial Project (or “Trial Project”).<sup>1</sup> Established in early 1992, a core function of the Trial Project is to provide consultation, training, and assistance to counsel and courts to improve the quality of representation and the cost-effectiveness of defense services in federal capital prosecution cases.<sup>2</sup> I joined the Trial Project in 2010 as a Capital Resource Counsel and became the Director of the Capital Resource Counsel (CRC) project in 2015. The Trial Project is funded and administered by the Defender Services Office of the Administrative Office of the United States Courts.

2. My responsibilities as the Director of the Capital Resource Counsel Project include the monitoring of all federal capital prosecutions throughout the United States to assist in the delivery of adequate defense services to indigent capital defendants in such cases. This effort

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<sup>1</sup> The Trial Project assigns a CRC or FDPRC attorney to work with the defense team in every federal capital eligible case as a “resource counsel.” In their role as resource counsel, the CRC attorneys (full-time salaried federal defender staff) and FDPRC attorneys (part-time contractors) are not counsel of record; rather, they provide advice, assistance, and helpful information and resources to the defense team. In addition to their work as resource counsel, the CRC attorneys often serve as death-qualified “learned” counsel as part of their Project responsibilities; and the FDPRC attorneys are often appointed to serve as “learned” counsel as CJA counsel outside their role with the Project.

<sup>2</sup> The work of the Trial Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (May 1998), at 28 – 30, [http://www.uscourts.gov/sites/default/files/original\\_spencer\\_report.pdf](http://www.uscourts.gov/sites/default/files/original_spencer_report.pdf) [Perma.cc archive: <https://perma.cc/SU25-GWMV>]. The Subcommittee report “urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project . . . , which has become essential to the delivery of high quality, cost-effective representation in death penalty cases . . . .” *Id.* at 50.

An update to the Report states: “Many judges and defense counsel spoke with appreciation and admiration about the work of Resource Counsel. Judges emphasized their assistance in recruiting and recommending counsel for appointments and their availability to consult on matters relating to the defense, including case budgeting. Defense counsel found their knowledge, national perspective, and case-specific assistance invaluable.” *Report to the Committee on Defender Services, Judicial Conference of the United States, Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases* (September 2010) at 63.

<http://www.uscourts.gov/sites/default/files/fdpc2010.pdf> [Perma.cc archive: <https://perma.cc/LPH6-K8QB>].

includes overseeing the collection of data on the initiation and prosecution of federal capital cases.<sup>3</sup>

3. In the Second Circuit there have been fifteen federal capital trials from 2005 to the present.<sup>4</sup> The average time between charges being initiated and the trial date in federal capital cases is 53.4 months.<sup>5</sup> The average time between the notice of intent to seek the death penalty and the trial date is 30.2 months. The data regarding these trials is attached as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America, 28 U.S.C. §1746, that the foregoing is true and correct. Executed this 25th day of March, 2025.

/s/ Matthew Rubenstein  
Matthew Rubenstein

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<sup>3</sup> In order to carry out the duties entrusted to me, I rely on the data gathered by Kevin McNally who served as Resource Counsel with FDPRC since the inception of the Trial Project in January 1992, served as the Director of FDPRC between 2007 and 2018, and continued overseeing the collection of data on the initiation and prosecution of federal capital cases until 2024 when I took over this responsibility.

<sup>4</sup> Note that Ronell Wilson (E.D.N.Y. No. 1:04-CR-01016-NGG) was tried a second time after his first sentence of death was reversed. This trial was excluded from the data set because the preparation effort for a retrial is different than the preparation effort for a first trial and the calculation of the duration between charging and the start of the second trial is inapposite to the analysis of the average pre-trial preparation time.

<sup>5</sup> Note that the date of charges being initiated in the Ronell Wilson case is the date charges were filed in state court. Mr. Wilson was originally charged with the death penalty in state court. When the death penalty was being abolished in New York, the prosecution was transferred to federal court. Defense counsel remained from the state case and an attorney with federal experience was added to the defense team. And the date of charges being initiated in the Azibo Aquart case is the date charges were filed in state court. Federal involvement was evident from the outset, as the arrest was orchestrated by an FBI Special Agent supervising a federal task force, and federal authorities attended the state-court proceedings in October 2005.

## Exhibit A

Defendant	Docket No.	Victim Count	Status	Charged	Auth Date	Trial Start	Charge to Trial (Months)	Auth to Trial (Months)
Williams, Elijah Bobby	SDNY 1:00-CR-1008	3	Life-jury	9/26/00	2/4/03	3/22/05	53.9	25.6
Williams, Michael	SDNY 1:00-CR-1008	3	Life-jury	9/26/00	2/4/03	3/22/05	53.9	25.6
Aguilar, Martin	EDNY 1:01-CR-1367	1	Life-jury	12/10/01	5/14/04	10/30/06	58.7	29.5
Caraballo, Gilberto	EDNY 1:01-CR-1367	2	Life-jury	12/10/01	5/14/04	1/14/08	73.1	44.0
James, Richard	EDNY 1:02-CR-778	2	Life-jury	6/27/02	8/1/03	3/26/07	57.0	43.8
Mallay, Ronald	EDNY 1:02-CR-778	2	Life-jury	9/27/02	8/1/03	3/26/07	54.0	43.8
Henderson, Darryl	SDNY 1:02-CR-451	3	Acquittal	4/16/02	2/23/05	11/8/06	54.7	20.5
Pepin-Taveras, Humberto	EDNY 1:04-CR-156	2	Life-jury	2/20/04	3/3/05	9/15/08	54.8	42.4
Barnes, Khalid	SDNY 1:04-CR-186	2	Life-jury	2/27/04	1/19/06	2/11/08	47.5	24.7
Wilson, Ronell	EDNY 1:04-CR-1016	2	Death Rev	3/12/03	8/2/05	10/11/06	43.0	14.3
McGriff, Kenneth	EDNY 1:04-CR-966	2	Life-jury	1/18/05	3/22/06	11/27/06	22.3	8.2
Basciano, Vincent	EDNY 1:05-CR-60	1	Life-jury	1/26/05	4/2/07	3/1/11	73.2	47.0
McTier, James	EDNY 1:05-CR-401	3	Life-jury	5/20/05	1/14/07	10/15/07	28.8	9.0
Aquart, Azibo	D.CT 3:06-CR-160	3	Death Rev	9/2/05	1/29/09	4/6/11	67.1	26.2
Saipov, Sayfullo Habibullaevic	SDNY 1:17-CR-722	8	Life-jury	11/1/17	9/28/18	10/11/22	59.3	48.4
							<b>801.2</b>	<b>453.2</b>
<b>Average:</b>							<b>53.4</b>	<b>30.2</b>

*United States v. Payton Gendron*

**22-CR-109-LJV**

**DEFENDANT'S  
EXHIBIT B**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

22-CR-109 (LJV)

PAYTON GENDRON,

Defendant.

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**DEFENDANT’S PROPOSED SCHEDULING ORDER**

<b>2026 TRIAL DATE</b>	
<b>Date</b>	<b>Filing(s)</b>
3/31/2025	Motion to Change Venue
3/31/2025	Challenges to VIE
4/4/2025	Proposed Juror Questionnaires
4/7/2025	Def. Reply to 924(c); Supplemental Submission Re <i>Delligatti</i>
4/14/2025	Def. Reply Re Aggravating Factors
4/21/2025	Gov. Response Re <i>Delligatti</i>
4/28/2025	Def. Reply Re <i>Delligatti</i>
5/1/2025	FDPA Proffers
5/9/2025	G. Responses to Venue and VIE
5/20/2025	<i>Roper</i> Hearing
6/10/2025	Def. Replies Venue and VIE
6/30/2025	Motions to Suppress
7/28/2025	G. Response to Motions to Suppress
8/25/2025	Def. Reply to Motions to Suppress
9/9/2025	OA re Motions to Suppress
9/22/2025	Hearings on Motions to Suppress (September -October 2026) (post-hearing briefing TBD as necessary)
10/13/2025	Parties to exchange Proposed Jury Instructions for the Guilt Phase
10/27/2025	Parties to confer re Proposed Jury Instructions for the Guilt Phase
11/10/2025	Guilt Phase - Parties to file Joint Proposed Jury Instructions with areas of agreement/disagreement clearly noted and MOL in Support
12/1/2025	Parties to exchange Proposed Jury Instructions for the Penalty Phase

<b>2026 TRIAL DATE</b>	
<b>Date</b>	<b>Filing(s)</b>
12/8/2025	Responses to MOL's in support of Proposed Jury Instructions
12/15/2025	Parties to confer re Proposed Jury Instructions for the Penalty Phase
12/22/2025	Replies to Responses to MOL's in Support of Proposed Instructions
1/5/2026	OA re Guilt Phase Jury Instructions (week of 1/5 or 1/12)
1/12/2026	Penalty Phase - Parties to file Joint Proposed Jury Instructions with areas of agreement/disagreement clearly noted and MOL in Support
1/26/2026	Guilt Phase - Exhibit Lists; Witness Lists; Expert Disclosures
2/2/2026	Responses to MOL's in support of Proposed Jury Instructions
2/2/2026	Venue - Hearing (the week of 2/2)
2/16/2026	Replies to Responses to MOL's in Support of Proposed Instructions
2/16/2026	Def. Post Hearing Memo Re Venue
2/23/2026	Guilt Phase - MIL; Daubert Motions
3/2/2026	OA re Jury Instructions (week of 3/2 or 3/9)
3/2/2026	Penalty Phase -Exhibit Lists, Witness Lists, Expert Disclosures
3/2/2026	Gov. Post Hearing Memo Re Venue
3/9/2026	Def. Reply to Post Hearing Re Venue
3/23/2026	Guilt Phase - Response to MIL; Daubert
3/30/2026	Penalty Phase - Def. MIL
3/23/2026	OA Re Motion to Change Venue (the week of 3/23)
4/13/2026	One Step Summons/Qualification Forms mailed to prospective jurors
4/20/2026	Guilt Phase - Replies for MIL
4/27/2026	Penalty Phase - G. Response to MIL
5/4/2026	One Step Summons/Qualification Forms returned, distributed to court and parties
5/4/2026	week of - Guilt Phase - Daubert Hearings
5/19/2026	Def. 12.2 Notice
5/25/2026	Court to Excuse all Unqualified /Exempt Prospective Jurors
5/25/2026	Parties submit proposed instructions for jurors summoned to complete questionnaires
5/25/2026	Penalty Phase - Def. Reply for MIL
6/1/2026	G. Motion for 12.2 Evaluation
6/8/2026	Penalty Phase - Daubert Hearings
6/15/2026	Def. Response to G. Motion for 12.2 Evaluation
6/22/2026	G. Reply to Motion for 12.2 Evaluation
6/22/2026	Panels to Court to Complete Juror Questionnaires

<b>2026 TRIAL DATE</b>	
<b>Date</b>	<b>Filing(s)</b>
6/29/2026	Completion of Juror Questionnaires by all panels by this date
7/13/2026	All completed Juror Questionnaires provided to the parties in pdf form
8/10/2026	Parties Submit to Court list of stipulated strikes for cause and hardship
9/8/2026	Voir Dire Commences